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Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00261 HG
)	
Plaintiff,)	
)	
vs.)	UNITED STATES' SECOND
)	SUPPLEMENTAL OPPOSITION TO
JAMES TROIANO,	(01)	DEFENDANT TROIANO'S MOTION FOR
also known as:)	SEVERANCE OF DEFENDANTS;
"JOHN KLATT,")	CERTIFICATE OF SERVICE
WENDELL K. TOKI,	(02)	
)	
Defendants.)	
)	

**UNITED STATES' SECOND SUPPLEMENTAL OPPOSITION
TO DEFENDANT TROIANO'S MOTION FOR SEVERANCE OF DEFENDANTS**

COMES NOW the United States of America, by and through its attorneys, Edward H. Kubo, Jr., United States Attorney for the District of Hawaii, Wes R. Porter and Clare E. Connors, Assistant United States Attorneys, and hereby submits its second

supplemental opposition to defendant James Troiano's ("Troiano") Motion for Severance of Defendants, filed on February 23, 2006 ("Motion"). The United States submits this second supplemental opposition for the limited purpose of addressing Troiano's argument under Crawford v. United States, 541 U.S. 36 (2004), which he sets forth in his Supplemental Memorandum in Support of Motion For Severance of Defendants, filed March 21, 2006.

Troiano asserts that Bruton and its progeny did not contemplate the Supreme Court's ruling in Crawford. Supp. Mem., 2. To the contrary, the holding in Crawford is entirely consistent with the Supreme Court's holding in Bruton v. United States, 391 U.S. 123 (1968). As in Bruton, the Supreme Court in Crawford rejected the admissibility of accomplice confessions to law enforcement officers implicating the accused on trial. Crawford, 541 U.S. at 52. Thus, it in effect reaffirmed the Supreme Court's basis for the protections it established in Bruton. Id. at 57. Toki's confession cannot and will not be offered against Troiano because of Sixth Amendment concerns. The holding in Crawford does not alter this tenet and it does not change the Bruton analysis with respect to Troiano, which includes redaction and the formulation of appropriate jury instructions.

In fact, the Supreme Court specifically held in Crawford that its holding was consistent with its holding in

other Confrontation Clause cases, including Bruton. Id. at 57-58. Thus, Troiano's basis for suggesting that Crawford overruled Bruton and its progeny is unfounded. Toki's statement is not being introduced against Troiano, the accused accomplice, but rather is limited to Toki. As to Toki, the confession is non-hearsay under Rule 801(d)(2) of the Federal Rules of Evidence and therefore does not implicate the Sixth Amendment concerns set forth in Crawford.

IV. CONCLUSION

For these reasons, the defendant has failed to meet the heavy burden of showing that he will suffer manifest prejudice if the case were not severed. Accordingly, the Court should deny Troiano's Motion for Severance.

DATED: March 22, 2006, at Honolulu, Hawaii.

Respectfully submitted,

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By /S/ Clare E. Connors
WES R. PORTER
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CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

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March 22, 2006

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March 22, 2006

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WENDELL R. TOKI

DATED: March 22, 2006, at Honolulu, Hawaii.

/s/ Iris Tanaka